(4)

C/1005

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**
**(C.G.)**

**W.P. No. 1982 /2002**

Petitioner

Saroj Dubey
S/o Late Shri Devi Charan Dubey
Aged about 60 years
Principal, Government
Gajanand Agrawal College
BHATAPARA (C.G.)

W.P. No. 2024/02
Received by Shri ... Advocate
dated 26.9.02

Vs.

Respondents 1. Govt. of Chhattisgarh
Through the Principal Secretary
Deptt. of Higher Education,
Technical Education,
Man Power Planing & Technology
Raipur (C.G.)

2. Commissioner,
Higher Education,
Govt. of Chhattisgarh
RAIPUR (C.G.)

3. Secretary to the Chief Minister
Govt. of Chhattisgarh,
DKS Bhawan
Raipur (C.G.)

4. Shri Shiv Ratan Sharma,
S/o Not Known
MLA, Bhatapara (C.G.)

5. Harish Mishra
S/o Sunderlal Mishra
(Expelled Student of the Govt.
Gajanand Agrawal College
R/o Balbhadra Ward,
Behind Petrol Pump
Bhatapara (C.G.)

शपथ आयुक्त,
2419

Received
26-9-02

(5)

6. Govt. Gajanand Agrawal College
Bhatpara (C.G.)

7. Ravishankar University
Raipur (C.G.)
Through the Registrar.

**Petition under/Article 226 of the Constitution of India for issuance of appropriate writs of Certiorari & Mandamus etc. with other orders and directions.**

(240)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No. 1982 of 2002

Saroj Dubey

-Versus-

Govt. of Chhattisgarh and others

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POST FOR ORDER ON 26th MARCH, *2004*

Sd/-
L.C.BHADOO
Judge
25th.03.2004

(241)

**HIGH COURT OF JUDICATURE, CHHATTISGARH (BILASPUR)**

**Writ Petition No. 1982 of 2002**

Saroj Dubey

-Versus-

Govt. of Chhattisgarh and others

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Present:

Shri Kanak Tiwari, counsel for the petitioner.

Shri Shashank Dubey, Deputy Advocate General for the Respondent Nos. 1 to 3.

Shri B.M. Rao, Advocate for Respondent No.5.

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**O R D E R**

(Passed on 26th March 2004)

**As per L.C. Bhadoo J.**

1. The petitioner who was working as Principal of Govt. Gajanand College, Bhatapara has preferred this writ petition under Article 226 of the Constitution of India questioning her transfer order No. F1/56/HE/2002 dated 17.9.2002 passed by the Respondent No.1 and also the Order No. 93/968/VIP/HE/2001 dated 8.1.2002 passed by the Respondent No.1 and for quashing the show cause notice dated 18.4.2002.

2. The brief facts leading to filing of this writ petition are that the petitioner was working as Principal of Govt. Gajanand College, Bhatapara since 21st October, 1997. Her case is that the respondent No.5 namely, Harish Mishra was a regular student in the College; he assaulted and spit on the face of one P. C. Chandrawanshi, Sports Officer on 25.9.2001. That Sports Officer made a report about the incident, which is Annexure P/1. The petitioner on the same day wrote a letter to the father/guardian of the respondent No.5 complaining about the conduct of the respondent No.5 and also requested to attend the meeting of the members of the Staff Council called on 26.9.2001 vide Annexure P/2. The petitioner also made a report to the Station House

Officer, P.S. Bhatapara on the same day about the incident, and requested for registration of a case against Sonu Sharma, Sunil Sharma and the respondent No.5. Copy of the letter to the police is filed as Annexure P/3.

3. On 26.9.2001, the meeting of the Staff Council was convened under the Chairmanship of the petitioner and the Staff Council unanimously resolved to expel the Respondent No.5 from the college. The attendance of the members of the Staff Council and resolution has been filed as Annexure P/4. In spite of the letter Annexure P/2 issued by the petitioner to the father/guardian of the Respondent No.5, the father or guardian of the Respondent No.5 did not attend the meeting on 26.9.2001. However the police registered a criminal case against the Respondent No.5 and others for commission of the offences punishable under sections 294, 323, 506 and 448 read with section 34 of the Indian Penal Code.

4. One Dr. Ram Kumar Behar, Principal of Govt. Sanskrit College, Raipur was appointed as Enquiry Officer by the Respondents No. 1 and 2 to enquire into the matter, although no formal communication was sent to the petitioner by the respondents. The aforesaid Enquiry Officer informed about his arrival on telephone and the said Sports Officer submitted his written report to the Enquiry Officer on 13.10.2001 (Annexure P/5). Prior to that the President of the Jan Bhagidari Samiti of the college sent a letter dt. 27.9.2001 (Annexure P/6) to the petitioner in which the President condemned the behaviour of the Respondent No.5. Since the college is affiliated to the Ravishankar University, Raipur, which has been created under the M.P. Universities Act, 1973 and Section 37 authorizes the University to frame statutes, ordinances etc. accordingly the ordinance No.7 has been made by the said University which is annexed as Annexure P/7. The petitioner after careful and well considered deliberation over the matter ordered the expulsion of the Respondent No.5 from the College, which became effective.

5. After the expulsion of Respondent No.5 from the College he started complaining against the petitioner in the general public,

educational world, the student community of the College and most appropriately the politicians having clout on the Respondent No.1, and false, frivolous and fictitious complaints were made against the petitioner to the Respondents No. 1 and 2 by the Respondents No. 4 and 5 to exert pressure on the petitioner to readmit the Respondent No.5. As if nothing untoward had happened with regard to the aforesaid incident the petitioner received letter dt. 13.11.2001 (Annexure P/8) and letter dated 8.1.2002 (Annexure P/9) from the Joint Secretary of the Respondent No.1.

6. The respondent No.4 approached the State Government that is why the Respondent No.1 wrote a letter dated 13.11.2001 to the petitioner by which the Govt. communicated its decision to the petitioner holding interalia that the expulsion order of the Respondent No.5 may be cancelled after obtaining unqualified apology and undertaking for not committing any indiscipline in future. The petitioner replied to the aforesaid letter on 29.11.2001 and quoted the aforesaid provisions of the aforesaid Ordinance vide Clause 6 wherein the powers of the Head of Institution i.e. the petitioner being the Principal have been described and that it was not possible for the petitioner to have condoned the aforesaid respondent No.5. In the meantime, on account of the pressure of the Respondents No. 4 and 5 the respondent No.1 on 7.1.2002 amended clause 13 of the Ordinance No.7 by adding sub-clause (7) to the Clause 13 made under Section 37 of the Madhya Pradesh Universities Act, 1973 whereby a provision for appeal to the State Government against the decision of the Principal/Head of the Institution was inserted and immediately thereafter vide order dated 8.1.2002 in view of the amendment considered the case of the Respondent No.5 and communicated to the petitioner that the State Govt. has decided to annul the order of the petitioner of expulsion of the Respondent No.5. But that amendment was not approved by the Co-ordination Committee (Executive Committee) of the University, and neither the Respondent No.5 had submitted unqualified apology and undertaking nor that earlier direction communicated to the petitioner on 13.11.2001 was set aside by

the respondents. The petitioner informed the respondent No.1 that as per the instructions no letter of apology or undertaking was furnished by the Respondent No.5, therefore, there was no question to re-admit him. However, in spite of the petitioner's sticking to the Rules with regard to the conduct of respondent No.5, the Respondent No.1 State proceeded against the petitioner invoking Rule 14 of the M.P. (Chhattisgarh) Civil Services (Classification, Control and Appeal Rules) 1966 and gave a show cause notice dt. 18.4.2002 (Annexure P/12) and the petitioner was charged with insubordination of the orders of the respondent/State quoting therein that the petitioner did not obey the contents of the letter dt. 13.11.2001. Alongwith the charge-sheet/show cause notice a letter dated 21.8.2002 written by the Respondent No.5 was also sent in which he made complaint against the petitioner but did not explain his conduct about non-tendering of the unqualified apology or undertaking.

7. That all of a sudden the petitioner was transferred against the policy and principles by the Respondents No. 1 and 2 vide order dated 17.9.2002 (Annexure P/16), even though there was no administrative exigency but it was actuated due to the malice and acute malafide of the respondent No.4 in the aid and assistance of the respondent No. 5 ultimately percolating in the decision making process of the State. The transfer of the petitioner was due to the extraneous considerations, which tantamount a punishment to the petitioner and is illegally impermissible as stipulated in the C.C.A. Rules.

8. Return has been filed on behalf of the Respondents No. 1 to 3 in which it has been mentioned that the transfer was on the ground of administrative exigency, the petitioner was working since last five years in the college and moreover, the petitioner has already been relieved, therefore, the petition has become infructuous. There were complaints against the petitioner, therefore, she was transferred on the ground of administrative exigency. As far as quashing of the charge-sheet dated 18.4.2002 is concerned, the facts which have been narrated in support of this relief, would be available to the petitioner in the enquiry against her. She can raise these points before the Enquiry Officer. It is wrong to say

that the amendment has not been carried out by following the procedure. It was approved by the Co-ordination Committee of the University. As far as allegations regarding assault on the sports officer are matter of records and the police has registered some offences. It is mentioned that the petitioner has given opportunity to the guardian of respondent No.5, but Brajesh Mishra elder brother of respondent No.5 was not allowed to participate in the proceeding of the Staff Council Meeting, Mishra or his brother were not heard before his expulsion. The allegations against respondent No.4 are denied, as the same are not based on records. There are allegations and counter allegations as far as assault is concerned. The important consideration for re-admission of the student was only to the extent that he is able to complete last year's studies. When the petitioner was asked to obtain an unqualified apology from respondent No.5 and allow him to attend his classes, the petitioner rather than complying with the directions of the Government and His Excellency the Governor, flouted it and questioned the authorities. The way the petitioner acted in questioning the authorities after improperly issuing the expulsion order justified the action of issuing show cause notice against her. Therefore, the petition be dismissed. Further the respondents denied all the allegations mentioned in the petition.

9. Similar return has been filed on behalf of respondent No.5 and he has also denied the allegations of any assault or spit on the face of the Sports Officer and he has said that he has been falsely implicated in the criminal case. The resolution of the Staff Council to expel the petitioner was not unanimous. Prior to this an enquiry committee constituted by the petitioner to enquire into the conduct of respondent No.5, but that committee could not take any decision and did not make any recommendation, respondent No.5 was expelled from the College, without any opportunity of hearing to the Respondent no.5 or his guardian. He has further denied the fact that the M.L.A. supported respondent No.5. The respondent No.5 was ready to apologize to the petitioner unconditionally. But, she refused to see or to talk to respondent or to receive apology letter. Therefore, respondent

had sent his apology letters to the petitioner by registered post. Copies of apology letters are Annexures-R/2 and R/3.

10. I have heard Shri Kanak Tiwari, learned counsel for the petitioner, Shri Shashank Dubey, Deputy Advocate General for the State/respondents 1 to 3 and Shri B. M. Rao, learned counsel for respondent No.5.

11. Mr. Kanak Tiwari argued that the petitioner was transferred by a malafide order due to pressure exerted by respondent No.4 who was a sitting M.L.A., as respondent No.5 assaulted and spit on the face of Mr. P.C. Chandrawanshi, the Sports Officer, on 25-9-2001 as a result of which respondent No.5 was expelled from the College. A criminal case was also registered against him. Thereafter, respondent No.5 approached the State Government from where the Joint Secretary of the State Government issued a communication dated 13-11-2001 whereby the petitioner was asked to recall the order of expulsion and to re-admit respondent No.5 after taking an apology and an undertaking from him that in future he shall not indulge in any indiscipline. As respondent No.5 did not tender any apology or submit any undertaking, therefore, the order of expulsion could not be recalled. Respondent No.4, who was the sitting M.L.A., in connivance with respondent No.5 started exerting pressure on the Government and respondent No.4 also raised the question against the petitioner in the Assembly as a result of which the State without following the legal procedure amended Clause-13 of Ordinance No.7 and sub-clause (7) was added to Clause-13 of the Ordinance 7 empowering the State Government to take decision as an Appellate Authority and the said amendment was carried out on 7-1-2002 and the appeal of respondent No.5 was allowed whereby the expulsion order of respondent No.5 was set-aside without hearing the petitioner. As respondent No.5 did not tender apology or submit an undertaking, therefore, expulsion order was not recalled and ultimately, as a result of which by malafide action and bias the respondent/State transferred the petitioner by the impugned order dated 17-9-2002, as at that time the transfer season was over and after obtaining approval from the Chief Minister, the petitioner was transferred in an extraordinary

manner. The transfer was not on the ground of administrative exigency.

12. Similarly, the petitioner was served with show cause notice with charge sheet dated 18-4-2002 which was also issued on account of malafide and bias, and also on account of the pressure exerted by respondents 4 and 5 and the amendment was carried out even without seeking approval of the Co-ordination Committee of the University and all above exercise was colourable exercise. Since, above actions of respondents are arbitrary, issued with bias and malafide intention, therefore, they are liable to be quashed. However, Mr. Tiwari did not press rest of the prayers of the petition.

13. On the other hand, Mr. Dubey learned Deputy Advocate General argued that the charge of malice, bias and malafide is without any basis. The petitioner was transferred on the ground of administrative exigency and the amendment in the Ordinance No.7 of Madhya Pradesh Vishwavidyalaya Adhiniyam was carried out after following the procedure and only after getting the approval from His Excellency the Governor. Even Co-ordination Committee of Pandit Ravishankar Shukla University also approved the same amendment. The charge sheet dated 18-4-2002 was served upon her on account of her act of insubordination and not complying with the Government's order.

14. Learned counsel for respondent No.5 argued that the petitioner levelled false allegations against him and the order was passed without giving an opportunity of hearing. In response to the notice issued by the petitioner (Annexure-P/2) his elder brother namely, Brajesh Mishra came to the Colllege to meet the Principal. Neither Brajesh Mishra was allowed to attend the Staff Council meeting nor the Principal met him. He further argued that respondent No.5 tried to meet the Principal and submit his unconditional apology and undertaking, but the Principal did not meet him. Respondent No.5 had to send his unconditional apology and undertaking by the registered post.

15. It is settled law that the judicial review lies against the administrative action of an authority of the State only when the

action under challenge was taken on account of bias, malafide and malice or on extraneous considerations, and if the transfer of an employee is based on malafide or contrary to the statutory rules only raising the grounds in the petition would not be sufficient, but the petitioner has to establish those grounds by some documentary evidence.

16. As has been held by the Hon'ble Apex Court in the matter of **STATE OF PUNJAB Versus V. K. KHANNA AND OTHERS** reported in **(2001) 2 Supreme Court Cases 330** that:

> "The concept of fairness in administrative action has been the subject-matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the court and no strait-jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness and on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed___it is the appreciation of this common man's perception in its proper perspective which would prompt the court to determine the situation as to whether the same is otherwise reasonable or not."

It has been further held that:

> "Whereas fairness is synonymous with reasonableness___bias stands included within the attributes and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". Mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was a bias or a mala fide move which resulted in the miscarriage of justice."

It was further held that:-

> "The test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias, administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore, would not arise."

17. In the matter of **S. PARTHASARATHI Versus STATE OF ANDHRA PRADESH** reported in **(1974) 3 SUPREME COURT CASES 459** the Hon'ble Apex Court has held that:

> "The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that

he is likely to be prejudiced, that is sufficient to quash the decision."

18. Therefore, in view of the above law laid down by the Hon'ble Apex Court before quashing of any administrative action of the State i.e. transfer order or issuance of the charge sheet to the petitioner the real tests for exercising the power of judicial review is that the Court is required to take a decision as to whether in the facts and circumstances of the case the petitioner has been able to plead and establish that the impugned orders were passed on account of bias, malafide, ill will or malice or for extraneous considerations.

19. Now, coming to the facts of the present case, as per the admitted case, the petitioner was working as Principal, Govt. Gajanand Agrawal College, Bhatapara since 21st October 1997 and on 25th September 2001 some incident took place in the office room of Mr. P.C. Chandrawanshi, Sports Officer of the college and against which Mr. Chandrawanshi made a complaint to the petitioner regarding misconduct and misbehaviour of respondent No.5 and in turn the petitioner, on the same day, lodged the report of the incident with the police station and the police registered the case against the respondent No.5 along with two other associates for commission of the offence under Sections 294, 323, 506 and 448 read with Section 34 of the I.P.C.. The petitioner also gave notice to the father/guardian of respondent No.5 to come and explain the conduct of respondent No.5 on 26-9-2001. The contention of the petitioner is that in response to that notice guardian/father of respondent No.5 did not appear before her whereas, the defence of respondent No.5 is that on the next day i.e. 26-9-2001 his elder brother namely, Brajesh Mishra went to school to meet the Principal, but the principal did not meet him nor his brother was allowed to participate in the Staff Council meeting.

20. On the other hand, the Government's stand is that since the petitioner had already completed 5 years as a Principal of the College, therefore, on the administrative exigency she was transferred and moreover, there were complaints against the

petitioner. Therefore, after getting the approval from the Education Minister and the Chief Minister the petitioner was transferred on the ground of administrative exigency. They have further denied that the petitioner was transferred on account of malafide. In this connection Shri S.P. Trivedi, Secretary/Commissioner, Government of Chhattisgarh, Higher Education Department, D.K.S. Bhawan, Mantrayala, Raipur and Shri K. K. Chakravarti, Principal Secretary, Government of Chhattisgarh, Higher Education Department, D.K.S. Bhawan, Mantralaya, Raipur, have filed their affidavits wherein they have categorically stated that the petitioner was working as a Principal since last five years and there were more than one complaint against her that is why she was transferred. Allegations of malafide against the authority are false. The respondents in support of their return have filed one of the complaints (Annexure-R/1) in which one Arun Kumar, President, Block Congress Committee, sent a complaint to the Education Minister regarding the conduct of the petitioner in which it was written that on 24-7-2002 a meeting of members of Janbhagidari Samiti and the principal was called in connection with the plantation and during the meeting some discussions took place regarding encroachment in which the principal did not behave properly.

21. In this connection, if we look into the petition and the documents annexed therewith, the petitioner in the petition has mentioned that respondent No.5 not only abused the Sports Officer but he also spit on the face of Sports Officer, whereas, if we look into the complaint made by the Sports Officer (Annexure-P/1), it has been mentioned in the complaint that respondent no.5 used filthy and abusive language and after chewing the 'Gutkha', he spit in the chamber. It has nowhere been mentioned in the complaint that respondent No.5 spit on the face of Mr. P.C. Chandrawanshi, Sports Officer, therefore, this fact has been mentioned in the petition in an exaggerated manner.

22. It has further been mentioned in the petition that the father/guardian of respondent No.5 was invited on 26-9-2001 but they did not meet the Principal whereas, respondent No.5 in his return has specifically stated that in response to the notice

his brother Brajesh Mishra came to meet the Principal, but the Principal did not give hearing to his brother or the petitioner before passing the order. Even he was not allowed to participate in the Staff Council meeting. This fact has not been denied by the petitioner by way of filing any rejoinder. The stand taken by respondent No.5 get strengthened from the fact that Annexure-R/6 submitted by the petitioner before Enquiry Officer Dr. R. K. Behar, in this reply it has been mentioned by the petitioner that elder brother of respondent No.5 Brajesh Mishra came but he was not allowed to participate in the Staff Council meeting on account of the objection raised by Shri D. Meshram, professor of Botany. Therefore, the averment of the petitioner in the petition that nobody came to meet her in response to the letter issued by her on 25-9-2001 is not correct.

23. As far as not tendering unconditional apology and undertaking by respondent No.5 is concerned, it has been mentioned in the reply that after the Government's order dated 13-11-2001, he tried to meet the Principal, but she did not meet him and, therefore, he had to send unconditional apology and undertaking by the registered post and to this effect also no rejoinder has been filed by the petitioner denying this fact. Moreover, respondent No.5 has annexed with his reply the postal receipt (Annexure-R/4) and copies of letters Annexures-R/2 & R/3 showing the registered letter sent to the petitioner. But, the petitioner has not stated anything about this fact, therefore, the petitioner's contention that respondent No.5 had not tendered any unconditional apology nor he submitted any undertaking to maintain discipline in future is without any basis. The petitioner has tried to prove the malafide on behalf of the respondents/Government by narrating facts and circumstances of the case. But, as mentioned above, the allegations levelled by the petitioner has been denied by the State Government. Moreover, respondent No.5 has also submitted in his affidavit and reply which has not been controverted by the petitioner by way of filing rejoinder or affidavit. Moreover, as mentioned earlier, the petition contains exaggerated facts and does not depict the actual facts.

24. Moreover, when the Government sent letter (Annexure-P/8) dated 13-11-2001 to the petitioner for recalling the expulsion order of respondent No.5 on furnishing an unconditional apology and undertaking by respondent No.5, instead of making the compliance of the same or coming with a solution of the issue, the petitioner sent her reply (Annexure-P/10) dated 29-11-2001 in which she, while referring the relevant rules, mentioned that criminal case has been registered against respondent No.5, therefore, the petitioner is entitled to refuse the admission to such students. She further objected that it would create a bad precedent and it would cause bad effect in the administration of the education of the State of Chhattisgarh. In para-6 of Annexure-P/10 she has further submitted that as per the provisions of Ordinance No.7 under Section 13 the Principal is the final authority and she is competent to take such action against any student.

25. As has been mentioned above, the petitioner's stand is that respondent No.5 did not submit any undertaking and unconditional apology. But, the petitioner has not been able to establish the fact that respondent No.5 had not submitted any unconditional apology or undertaking. Thereafter, amendment was carried out in the Ordinance No.7 (Annexure-P/11) on 7-1-2002 and on 8-1-2002 the appeal of respondent No.5 was allowed and the order of the Principal was set-aside. The same was communicated to the petitioner but even then the petitioner refused to recall the expulsion order of respondent No.5. The petitioner again mentioned that respondent No.5 had not submitted any unconditional apology or undertaking which the petitioner has not been able to establish. Instead of making compliance of the Government order, the petitioner sent reply in the form of right of the petitioner to expel respondent No.5. The reply of the Government clearly indicates that the main consideration before the Government in allowing the appeal was that this was the last year of respondent No.5, therefore, while considering the case of respondent No.5 this aspect was before the Government in allowing respondent No.5 to appear in the examination that is why the order of the Principal was set-aside.

Therefore, whole facts and circumstances of the case show that the petitioner was adamant in not recalling her order, even after the appeal was allowed by the respondent/State.

26. It is clear from the above facts that the ground of bias taken by the petitioner is without any basis. She has not been able to establish, rather the petition contains exaggerated facts as mentioned in the earlier part of this order. The petitioner had already completed 5 years' tenure as Principal. Further, the incident took place on 25-9-2001, thereafter the petitioner did not comply with the Government's order dated 13-11-2001, in spite of her continued persistence, she was not transferred. The petitioner was transferred only after one year of the incident. Had the respondents any malafide intention, there was nothing to prevent them to transfer the petitioner in the year 2001 when she did not obey the Government's order. Moreover, the transfer is the incident of service, no Government employee has any right to continue on particular post for indefinite and particular period. The Government has full right to transfer its employees in the public interest and it is also settled that long continuation of an employee on particular post is not in the public interest. Mr. Kanak Tiwari argued that the complaint was made mere by a political person that too he was from the Ruling Party, therefore, the Government should not have acted upon his complaint, rather it smacks foul. In my opinion, argument of the learned counsel for the petitioner in the first instance looks to be impressive. But, if we examine to it with a pragmatic approach, and to see that whether the members of Ruling Party are not entitled to make any genuine complaint and their complaint is always to be seen from the angle of misuse of power, the answer to the question to any mind is that such complaints cannot be thrown being from the member of a Party in power, but same has to be examined on the facts irrespective of the person from whom it was made. In the present case, as has been mentioned in the earlier part of this order the petition contains exaggerated facts. The petitioner was always adamant not to follow or implement Government's directions. Therefore, apprehension of the

petitioner is without any basis. Moreover, it was not the only ground of her transfer.

27. As far as the question of issuance of the charge sheet vide Annexure-P/12 dated 18-4-2002 is concerned, the charges levelled against the petitioner are that respondent No.5 was expelled by her order dated 29th September 2001 and the Government vide letter dated 13-11-2001 requested the petitioner that on submitting unconditional apology and the undertaking by the respondent No.5 that in future he would not indulge in indiscipline, his expulsion order be recalled. Thereafter, the Government vide letter dated 8-1-2002 set-aside the order of the Principal and she was directed to give admission to respondent No.5, even then the petitioner in defiance of the said Government's order had not admitted respondent No.5.

28. As has been discussed in earlier part of this order, when the respondent No.5 made a representation, vide letter dated 13-11-2001, the petitioner was asked by the State Government to consider the case of respondent No.5 for re-admission on his furnishing an unconditional apology and undertaking which as per the return of the respondent No.5, he tried to submit, but the petitioner did not allow him to meet, therefore, per force he had to send the letter by registered post. This fact has not been denied by the petitioner by filing any rejoinder or counter affidavit. On the contrary, the petitioner in her petition has alleged that respondent No.5 had not filed any undertaking or unconditional apology.

29. If we look into the reply sent by the petitioner, in response to the letters dated 13-11-2001 and 8-1-2002, the petitioner always tried to exert her authority in spite of the expulsion order passed by her was set-aside in appeal. The petitioner as a public servant ought to have complied with the order. On the contrary, the petitioner always remained as adamant and even challenged the amendment inserted in Ordinance No.7.

30. Therefore, in view of the above facts, it cannot be said that the charge sheet dated 18-4-2002 was issued on account of any bias, malafide, ill will or malice or with any extraneous considerations.

31. It is true that discipline in the Educational Institutions must be maintained at all costs, but that does not mean that "discipline should always to be pressed in to service at the cost of the discipline". There are different standard of discipline in the different departments. The standard of discipline is always strict in the Army than the other departments. The standard of discipline in the Police is different, in the Government Offices is different, in College and School education it is altogether different. While administering the discipline the Principal or the Head of an educational institution has always to see that in the first instance some corrective and reformative methods are adopted to make the students disciplined. It should not be in the form of spoiling the career of a student unless and until the student on account of his continued misbehaviour and misconduct becomes incorrigible. The punitive theory of punishment should only be applied in those extreme cases whether the student has not improved himself in spite of repeated chances given to him. Registering of a criminal case against a student is such an extreme step which should only be resorted in rarest of rare cases. If we look into the present case, respondent No.5 was Union President and he was also a student of final year. From the facts it is seen that there was some dispute regarding the sending of College Football team to participate in the games and respondent No.5 got infuriated on account of refusal by Sports Officer to show the calendar. The matter could have been sorted out by amicable means and by tactful handling instead of making it as a prestigious issue. In this case, the totality of facts shows that the petitioner always tried to assert her authority. Even at the cost of discipline to be maintained by a Government servant and particularly by a teacher. The relations between a teacher and student are so sacrosanct which should always be maintained in sporting spirit. The facts of this case disclose that the petitioner went to the extent of challenging the amendment inserted by the State Government forgetting the fact that her continued resistance and disobedience of the Government's order, the petitioner forced the Government to insert the provisions of appeal against the order

passed by the Head of Educational Institution. The right of appeal is given to the aggrieved person because if the order is passed on the ground of bias or contrary to the settled principles of law, then he/she can challenge the same in appeal which does not mean that the provision was inserted, in any manner, to dilute the authority of the Head of Educational Institution. One should not feel that Heads of Institutions are infallible; being human being they are bound to commit mistakes.

32. Learned counsel for the petitioner submitted that the amendment was carried out without seeking approval from the Co-ordination Committee of the University and within one day from the date of amendment the appeal was allowed and even the memo of appeal has not been produced by the State, therefore, action of the State was not correct.

33. As far as the question of amendment is concerned, as per the reply of the State, the amendment was approved by the Co-ordination Committee of the University vide its resolution dated 26-9-2002, therefore, there is no force in the contention of the learned counsel for the petitioner. As far as allowing the appeal of respondent No.5 is concerned, it was prerogative of the State and even if the memo of appeal which was filed by respondent No.5 is not produced that does not mean that the action of the respondent/State was on account of malafide or bias. It is true that before deciding the appeal the Government should have invited the comments of the petitioner in the ordinary course, but in this case, the petitioner had already sent her views on the matter in her earlier replies, therefore, even if the comments of the petitioner were not invited on appeal, in my opinion that does make the decision illegal in the facts and circumstances of the case.

34. Now, coming to question of quashing the order dated 8-1-2002 by which the State Government allowed the appeal and set-aside the expulsion order of respondent No.5, respondent No.5 has stated that even the petitioner did not meet his brother and no opportunity was given to him and he was expelled without giving any opportunity and the Government allowed the

appeal and set-aside the order of the Principal. Moreover, the State Government has categorically stated that as this was the last year of respondent No.5, in order to allow respondent No.5 to appear in the final examination, the order was set-aside. No other point was raised by the learned counsel for the petitioner.

35. Before parting with this order, I would like to observe that since the petitioner is going to retire on the last day of April 2004 and the enquiry which was instituted in the year 2002 has not been concluded so far, it is, therefore, expected that the respondents should expedite the enquiry and decide it within a period of two months from today so that the petitioner can get her retiral benefits in time.

36. In the result, the petitioner has not been able to make out a case for quashing of her transfer order dated 17-9-2002, show cause notice dated 18-4-2002 and the order dated 8-1-2002 passed by the State Government. Therefore, the petition is liable to be dismissed and it is dismissed.

37. Looking to the facts and circumstances of the case, cost is made easy.

Sd/-
L.C.BHADOO
Judge

Barve*